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Supreme Court of the United States

OCTOBER TERM, 1964.

No. 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,

Petitioners,

versus

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

On Writ of Certiorari to the Supreme Court of Alabama.

BRIEF OF RESPONDENT.

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INDEX.

	Page
OPINIONS BELOW	1
QUESTIONS PRESENTED FOR REVIEW	2
STATUTES	2
STATEMENT OF THE CASE	3
The Dispute	3
Jurisdictional Facts	6
BRIEF OF ARGUMENT	9
ARGUMENT	12
The Courts Of The Several States Have Jurisdiction Over Labor Disputes Involving An Employer Whose Operations Do Not Have A Pronounced Impact On Interstate Commerce	12
Assuming, Arguendo, That The Supreme Court Of Alabama Erred In Refusing To Consider The Operations Of Several Separate Corporations For Jurisdictional Purposes, This Court Should Remand This Cause To The Supreme Court Of Alabama With Directions To Apply Appropriate Law To The Facts	17
Broadcast Is A Single Employer For Jurisdictional Purposes	18
1. Interrelation of Operations	20
2. Centralized Control of Labor Relations	21

INDEX—(Continued)

	Page
3. Common Management	25
4. Common Ownership and Financial Control	28
State Courts Are Entitled To Determine Their Own Jurisdiction On The Basis Of Evidence Presented In The State Courts	36
A State Court Would Not Lose Jurisdiction Over A Labor Dispute Involving A Class Of Employers Over Whom The Board Had Declined To Assert Jurisdiction Merely Because The Union Attempted To Extend The Dispute To Employers Over Whom The Board Would Concededly Assert Jurisdiction	37
CONCLUSION	40
CERTIFICATE OF SERVICE	41
APPENDIX A:	
Final Decree in Broadcast Service of Mobile, Inc. v. Local 1264; International Brotherhood of Electrical Workers, et al., Circuit Court of Mobile County Alabama, No. 58,568-H Unpublished	43
APPENDIX B:	
Map Depicting Location of Operating Corporations	44
APPENDIX C:	
Letter of Dismissal of Jemcon Broadcasting Company, Case No. 15-RC-2444 Unpublished	45

INDEX—(Continued)

Page

APPENDIX D:
Decision of National Labor Relations Board in Jemcon Broadcasting Company, Case No. 15-RC-2617 Unpublished 47

APPENDIX E:
Denial of Request for Review in Jemco Broadcasting Company, Case No. 15-RC-2617 Unpublished 49

LIST OF AUTHORITIES.

Cases:
Alpha Corporation, 1960, 128 N.L.R.B. 309 30
Bachman Machine Company v. National Labor Relations Board, 8 Cir., 1959, 66 F.2d 599 .....11, 21, 25, 26, 28
Butte Water Company, 1957, 117 N.L.R.B. 484 .. 28
Canton, Carp's, Inc., 1959, 125 N.L.R.B. 483 ....20, 29
Carolina Supplies and Cement Company, 1958, 122 N.L.R.B. 88 38
Central Dairy Products Co., 1955, 114 N.L.R.B. 1189 .....22, 25, 27
Checker Cab Co., 1963, 141 N.L.R.B. 583 . 24, 32, 33, 34
Clark Concrete Construction Corporation, 1956, 116 N.L.R.B. 321 .....21, 25, 28
Consolidated Gas Company, 1953, 107 N.L.R.B. 148 .....25, 28
Corfu Manufacturing Corporation, 1961, 48 L.R.R.M. 1584 .....20, 23, 30
Crenshaw's, Inc., 1956, 115 N.L.R.B. 1374 21
Edward Small Productions, Inc., 1960, 127 N.L.R.B. 283 21

LIST OF AUTHORITIES—(Continued)

Cases—(Continued):

	Page
Employing Lithographers of Greater Miami v. National Labor Relations Board, 5 Cir., 1962, 301 F.2d 20	11, 26, 36
Family Laundry, Inc., 1958, 121 N.L.R.B. 1619	23, 29
Garner v. Teamsters Local 776, 346 U.S. 485, 98 L. Ed. 228	12
Goodman's, Inc., 1952, 101 N.L.R.B. 352	25, 28
Guss v. Utah Labor Relations Board, 1957, 353 U.S. 1, 1 L. Ed. 2d 601	9, 12
Hamilton Brothers, Inc., 1961, 130 N.L.R.B. 233	21
Hirsch v. McCullough, C.A.D.C., 1962, 303 F.2d 208	37
Incres Steamship Co., Ltd. v. International Maritime Workers Union, 371 U.S. 804, 9 L. Ed. 2d 557	14
Incres Steamship Co. v. International Maritime Workers Union, 1961, 10 N.Y. 2d 218, 176, N.E. 2d 719	14
J. G. Roy & Sons Company v. National Labor Relations Board, 1 Cir., 1958, 251 F.2d 771	12, 20, 26, 35
Jemcon Broadcasting Company, 1962, 135 N.L.R.B. 362	40
Miami Newspaper Pressmen's Local No. 46 v. National Labor Relations Board, C.A.D.C. 1963, 322 F.2d 405	11, 25, 26, 36
Miami Newspaper Printing Pressman Local No. 46, 1962, 138 N.L.R.B. 1346	25
Modern Linen & Laundry Service, Inc., 1954, 110 N.L.R.B. 1305	21, 25, 28
Modern Manufacturing Co., Inc. v. National Labor Relations Board, 344 U.S. 816, 97 L. Ed. 635	20

LIST OF AUTHORITIES—(Continued)

Page

Cases—(Continued):

National Labor Relations Board v. A. K. Allen Co., Inc., 2 Cir., 1958, 252 F.2d 37 .....27, 34

National Labor Relations Board v. Donnelly Garment Co., 330 U.S. 219, 237, 91 L. Ed. 854 18

National Labor Relations Board v. Jones Sausage Company, 4 Cir., 1958, 257 F.2d 878..20, 21, 34

National Labor Relations Board v. Pittsburgh Steamship Company, 337 U.S. 656, 661, 93 L. Ed. 1602 18

National Labor Relations Board. v. Royal Oak Tool & Machine Company, 6 Cir., 1963, 320 F.2d 77 35

National Labor Relations Board v. Somerset Classics, 2 Cir. 1952, 193 F.2d 613 20

Orkin Exterminating Company, Inc., 1956, 115 N.L.R.B. 762 19

Orkin "The Rat Man" Incorporated, 1955, 112 N.L.R.B. 762 19

Overton Markets, Inc., 1963, 142 N.L.R.B. 615 .....24, 32, 33, 34

P-M Garages, Inc., 1962, 139 N.L.R.B. 987 .....24, 31

Perfect T.V., Inc., 1961, 134 N.L.R.B. 575 31

Raritan Valley Broadcasting Company, Inc., 1958, 122 N.L.R.B. 90 .....10, 14

Sakrete of Northern California, Inc. v. National Labor Relations Board, 9 Cir., 1964, 332 F.2d 902 .....23, 35

San Diego Building Trades Council v. Garmon, 359 U.S. 236, 3 L. Ed. 2d 775 9

Siemons Mailing Service, 1958, 122 N.L.R.B. 81 15

LIST OF AUTHORITIES—(Continued)

Page

Cases—(Continued):

Smith v. Evening News Association, 371 U.S. 195, 197-8, 9 L. Ed. 2d 246 14

Spartan Cafeteria Corporation, 1954, 109 N.L.R.B. 166 .....21, 28

Toledo Service Parking Company, 1951, 96 N.L.R.B. 263 27

V. I. P. Radio, Inc., 1960, 128 N.L.R.B. 113 ....23, 30

Venus Die Engineering Company, 1954, 110 N.L.R.B. 336 .....20, 21

Wash Well No. 2, Inc., 1962, 139 N.L.R.B. 417 ..23, 31

Statutes:

Fair Labor Standards Act
29 U.S.C.A. 203(d) and (r) 15

Labor Management Relations Act
Section 2(2) (29 U.S.C.A. 152(2)) 15
Section 14(c)(1) (29 U.S.C.A. 164(c)(1)) ...2, 13
Section 14(c)(2) (29 U.S.C.A. 164(c)(2)) ...3, 14

Miscellaneous:

Landrum-Griffin Amendments to the National Labor Relations Act, 44 Minn. L. Rev. 257 .....9, 36, 38, 39

Twenty-First Annual Report of the National Labor Relations Board, 14, 15 .....11, 18, 23, 28

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Respondent.

On Writ of Certiorari to the Supreme Court of Alabama.

BRIEF OF RESPONDENT.

I.

OPINIONS BELOW.

The opinion of the Supreme Court of Alabama (R 402 et seq.) is quoted at ... Ala. ....., 159 So. 2d 452.

The Circuit Court of Mobile County, Alabama rendered a final judgment in this cause on March 6, 1964. (Appendix A.)

II.

QUESTIONS PRESENTED FOR REVIEW.

1. Does a state court have jurisdiction to determine its jurisdiction over an action for an injunction and damages brought by an employer pursuant to an Act of Congress providing that nothing in the National Labor Relations Act shall be deemed to prevent or bar state courts from assuming and asserting jurisdiction over any labor dispute involving any class of employers over which the National Labor Relations Board has declined to assert jurisdiction?

2. May a state court require a party to follow a uniform rule of pleading requiring the pleading of facts to support a plea in abatement to the jurisdiction of the court where the plea attempts to allege federal preemption?

3. May a state court make a factual determination of whether a particular employer belongs to "any class or category of employers" over which the National Labor Relations Board has declined to assert jurisdiction?

III.

STATUTES.

Labor Management Relations Act of 1947, as amended:

Section 14(c)(1):

The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the

Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

Section 14(c)(2):

Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

IV.

STATEMENT OF THE CASE.

A.

The Dispute.

Broadcast Service of Mobile, Inc., Respondent, herein called Broadcast, is an Alabama corporation and is engaged in the radio broadcast business in the City of Prichard, Mobile County, Alabama, and owns and operates radio station WSIM, Prichard, Alabama. (R 25, 70.)

Radio and Television Broadcast Technicians Local Union 1264, International Brotherhood of Electrical Workers, AFL-CIO, herein called Local 1264, is an unincorporated association and transacts business in Mobile County, Alabama. (R 25, 70.)

Prior to August 1, 1962, Broadcast purchased certain assets of Prichard Broadcasting Company, Inc., operators of radio station WAIP in Prichard, Alabama; WAIP ceased broadcast operations prior to August 1, 1962. (R 71.) David Fridge, a radio technician employed by Prichard Broadcasting Company, Inc., was terminated by Prichard Broadcasting Company, Inc., on July 31, 1962. (R 152.) Fridge executed a release to Prichard Broadcasting Company, Inc., for any compensation due Fridge under any employment or contract of employment with Prichard Broadcasting Company, Inc. (R 198.)

Broadcast employed John M. Hale as its manager. (R 84.) Hale was in charge of the operations of Station WSIM in Prichard. (R 100, 112, 113, 114, 127-8, 142, 185, 328-9, 340.) Hale selected the employees to commence operations in Prichard. (R 112, 113, 127, 185.) Hale determined not to employ Fridge because of Fridge's apparent poor work while employed by Prichard Broadcasting Company, Inc. (R 125-6, 138-9.)

On August 1, 1962, Broadcast commenced broadcast operations in Prichard, Alabama, under the call letters WSIM. (R 26, 71.)

On August 3, 1962, two days after Broadcast went on the air, Local 1264's business agent, Smith, and Fridge called on Hale. (R 131, 158, 160, 252.) Smith informed Hale that Broadcast had a contract with Local 1264 and that as far as Local 1264 was concerned, Fridge was an employee of Broadcast and since Fridge was there, Local 1264 was going to let Broadcast use Fridge. (R 131.) Hale informed Smith and Fridge that he did not understand the legal implications concerning Fridge and the alleged contract with Local 1264. (R 131, 160.)

Thereafter, Local 1264 admitted that it did not have a collective bargaining agreement with Broadcast, and requested that Broadcast recognize Local 1264 and negotiate a collective bargaining agreement with Local 1264. (R 134-5, 210.) Local 1264 did not at any time claim to represent any employee of Broadcast. (R 135, 284.) Local 1264's avowed intent was to require Broadcast to employ Fridge; Local 1264 was unconcerned with the employee Fridge was to replace. (R 136-7.)

Broadcast did not recognize Local 1264 as the collective bargaining representative of Broadcast's employees. Broadcast did not employ Fridge.

On August 10, 1962, Local 1264 commenced picketing Broadcast's office. (R 27, 72.) None of the persons who picketed Broadcast was or had ever been an employee of Broadcast. (R 27, 72.) Local 1264 admitted that the picketing and other activity was for the purpose of causing Broadcast to employ Fridge and to cause Broadcast to sign a collective bargaining agreement with Local 1264,

although Local 1264 never claimed to represent any employee of Broadcast. (R 230, 235-6, 275, 284.)

Local 1264 admitted, and Fridge and Business Agent Smith testified, that Local 1264 since August 10, 1962, had by picketing, letters addressed to persons, firms and corporations and by personal contact sought to effect a boycott of Broadcast and to cause persons doing business with or desiring to do business with Broadcast to cease doing business with Broadcast or to refrain from doing business with Broadcast. (R 27, 73, 202-3, 285-7.)

Representatives of Local 1264 in talking with Broadcast's advertisers emphasized that the advertisers should use union stations for the benefit of the advertisers' business. (R 313.) Local 1264's representatives told advertisers that the advertisers' business would be interfered with if word got around that the advertisers did not patronize union stations. (R 313.) A substantial number of persons who had formerly advertised over Broadcast ceased advertising over Broadcast immediately after a personal visit by a representative of Local 1264 or after the receipt of a boycott letter from Local 1264. (R 312-3, 320, 333, 344, 346.)

B.

Jurisdictional Facts.

Broadcast's gross income is substantially less than $100,000.00 per annum. (R 343.) For the period of August 1, 1962, through March 31, 1963, Broadcast's total sales were approximately $30,000.00. (R 343.)

Holt owns stock in and is an officer of four corporations, each of which operates a radio station. (R 324-6, 348.) The stations are located in Prichard, Alabama; Montgomery, Alabama; McComb, Mississippi; and Hattiesburg, Mississippi. (R 324-5.) Holt owns one hundred per cent of the stock of Air Enterprizes, Inc., a service organization, which performs accounting services for the four corporations. (R 324.) Each corporation has its own manager who operates the corporation's radio station. (R 91, 112, 113, 127, 142, 293-5, 303; 328.) The manager selects and discharges his own personnel. (R 127-8, 185, 293, 303, 328, 329, 340.) The manager sets the wages for his personnel. (R 128, 293, 329.) The manager determines when his employees will get a vacation or days off. (R 294.) Wages are not uniform among the several corporations. (R 328-9.) Each corporation maintains its own separate set of books in the city where it operates its radio station. (R 97, 327-8.) Each corporation maintains a separate payroll, (R 327) files separate federal income and social security tax returns, (R 326, 327) and each files separate reports with the Federal Communications Commission. (R 326.) Each corporation's funds are kept separately. (R 327.) Each corporation has a bank account in the city where it operates its radio station and each corporation also has a separate account in Hattiesburg, Mississippi. (R 327.) Each station manager makes his own purchases and approves his own bills for payment. (R 328.)

Air Enterprizes, Inc., performs accounting and auditing services for the various corporations. (R 340.) Each operating corporation pays its proportionate share of the

expenses of Air Enterprizes, Inc. (R 328.) Some of the stations have national advertising representatives and some have none. (R 340.) All advertising sold by Broadcast was sold in and about Prichard, Alabama. (R 347.) Broadcast has had no national advertising. (R 347.) One of the stations is an affiliate of the American Broadcasting Company; one is an affiliate of the National Broadcasting Company and two have no affiliation. (R 347.) Holt and Lightsey visit various stations periodically. (R 329.) They visit some stations more than others. (R 329.)

The Trial Judge summarized the testimony of the station manager:

> I think what this witness has said is that he runs that station and that is his job and nobody tells him insofar as details are concerned how to run it, and I don't imagine anybody is going to as long as he's doing a good job of making money, but I imagine if you start losing money then somebody is going to get concerned. Is that about what you said? (R 303.)

In confirming the Trial Judge's statement the station manager testified:

> MR. GIVENS:
>
> I do the hiring and firing, I don't ask nobody who I hire, who I fire. I do it for the purpose of making money, which I haven't been too successful at for a number of reasons. It's why we are in business. If I have to call Bob or anybody else—if I had to call even you in town here before I did anything, what would they have me there for? And, if things come up I handle them myself—I mean, that is what I'm there for.

THE COURT:

You are not trying to say that your orders cannot be countermanded?

MR. GIVENS:

No, sir.

THE COURT:

You are just saying that the way things are going now nobody has bothered you. They've told you to run the station.

MR. GIVENS:

Yes, sir. (R 303.)

Each station manager has complete responsibility for the day to day operation of his station. (R 302, 303, 328.)

V.

BRIEF OF ARGUMENT.

Congress through Section 14(c) of the Labor Management Relations Act, 1947, 29 U.S.C.A. 164(c) eliminated the "vast no-man's-land" created by *Guss v. Utah Labor Relations Board,* 1957, 353 U.S. 1, 1 L. Ed. 2d 601 and *San Diego Building Trades Council v. Garmon,* 359 U.S. 236, 3 L. Ed. 2d 775, by conferring jurisdiction on state courts over "unfair labor practies" and "questions of representation" involving classes of employers over whom the National Labor Relations Board had declined to assert jurisdiction because the operations of the class of employers did not have a pronounced impact on commerce. Cox, *Landrum-Griffin Amendments to the National Labor Relations Act,* 44 Minn. L. Rev. 257-262. State courts determine their

own jurisdiction by applying applicable decisions of the Board and federal appellate courts reviewing orders of the Board. Id.

In *Raritan Valley Broadcasting Company, Inc.*, 1958, 122 N.L.R.B. 90, the Board declined to assert jurisdiction over radio stations that have a gross volume of business of less than $100,000 per year because the $100,000 gross volume of business standard would cover "all labor disputes involving such enterprises which tend to exert a pronounced impact on commerce."

The Alabama Supreme Court found that Broadcast's gross volume of business was less than $100,000 and therefore asserted jurisdiction.

Neither the petitioners nor the United States have demonstrated how the "labor dispute", alleged "question concerning representation", or the "unfair labor practices" of Local 1264 will "exert a pronounced impact on commerce". No pronounced impact on commerce in fact exists.

The Board treats separate corporations which are closely related as being a single employer where the enterprises are substantially integrated. In determining whether sufficient integration exists, the Board considers "interrelation of operations; centralized control of labor relations; common management; and, common ownership or financial control." "No one of these factors has been held to be controlling, but the Board opinions have stressed the first three factors, which go to show the

'operational integration', particularly centralized control of labor relations." *Twenty-First Annual Report of the National Labor Relations Board,* 14-15.

The Board has considered several separate corporations as a single employer where the operations of one corporation are entirely or substantially dependent upon the other for its work, purchases or sales; the corporations occupy joint or adjacent facilities; share common rank and file employees as distinguished from officers and managers, and have uniform conditions of employment.

Here, each operating corporation operates a radio station in a city widely separated from any of the other radio stations. (Appendix B, R 324-6.) None of the operating corporations renders any services or makes any sales to any of the other corporations. There is no network among the several stations and each station manager is in complete charge of the day-to-day affairs of his corporation. (R 190, 303.) Working conditions of the employees of the separate corporations are not uniform. (R. 328-9.)

In reviewing Board orders the courts of appeals have stressed the actual control of day-to-day operations of related corporations and actual integration of operations making one corporation dependent upon the other *Employing Lithographers of Greater Miami v. National Labor Relations Board,* 5 Cir., 1962, 301 F.2d 20, 28-9; *Bachman Machine Company v. National Labor Relations Board,* 8 Cir., 1959, 266 F.2d 599, 605; *Miami Newspaper Pressmen's Local No. 46 v. National Labor Relations Board,* C.A.D.C. 1963, 322 F.2d 405, 408. When these factors were

not found, the Board order was not enforced. *J. G. Roy & Sons Company v. National Labor Relations Board*, 1 Cir., 1958, 251 F.2d 771.

VI.

ARGUMENT.

A.

The Courts Of The Several States Have Jurisdiction Over Labor Disputes Involving An Employer Whose Operations Do Not Have A Pronounced Impact On Interstate Commerce.

In *Garner v. Teamsters Local 776*, 346 U.S. 485, 98 L. Ed. 228, this Court held that the National Labor Relations Act conferred exclusive jurisdiction on the National Labor Relations Board, with certain exceptions, over all labor disputes that affected interstate commerce.

Prior to 1959 the Board declined to assert its full jurisdiction over many employers because of monetary or political reasons. In *Guss v. Utah Labor Relations Board*, 1957, 353 U.S. 1, 1 L. Ed. 2d 601, this Court held that the National Labor Relations Act pre-empted the jurisdiction of state courts over an employer whose operations affected interstate commerce although the operations of the employer were predominantly local and the Board had declined to exercise its jurisdiction.

Guss created "a vast no-man's-land subject to regulation by no agency or court." This "no-man's-land" e com-

passed labor disputes involving employers over whom the Board refused to assert jurisdiction and over whom *Guss* prevented state courts from asserting jurisdiction. This "vast no-man's-land" was enlarged by this Court's decision that state courts had no jurisdiction where the activity in question was "arguably" within the jurisdiction of the Board. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 3 L. Ed. 2d 775.

In 1959, subsequent to this Court's pronouncement of its "arguably" test of exclusive jurisdiction, Congress established a clear fracture between labor disputes over which the Board has exclusive jurisdiction and over labor disputes which are subject to state regulation. Congress needed, and in Section 14(c)(1) and 14(c)(2) of the Labor Management Relations Act 1947 as amended 1959, 29 U.S.C.A. 164(c)(1) and (2) provided, a clear and simple test to eliminate the "vast no-man's-land". Congress amended the Labor Management Relations Act, 1947, 29 U.S.C.A. 164(c)(1) and (2) in 1959 to provide:

> Section 14(c)(1):
>
> The Board in its discretion, may by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers where, in the opinion of the Board, the effect of such labor dispute in commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, that the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

Section 14(c)(2):

> Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

Under this unequivocal statute a state court is not barred from asserting jurisdiction even if the Board asserts jurisdiction over some phase of the labor dispute. *Cf. Smith v. Evening News Association*, 371 U.S. 195, 197-8, 9 L. Ed. 2d 246; *Incres Steamship Co., Ltd. v. International Maritime Workers Union*, 371 U.S. 804, 9 L. Ed. 2d 557, where this Court held that a state court had jurisdiction to enjoin picketing and other activity directed against a foreign flag ship in New York Harbor although the union representatives boarded American tugs, "and at least for a time persuaded the tug crews to stop disembarking" the foreign ship's passengers. *Incres Steamship Co. v. International Maritime Workers Union*, 1961, 10 N.Y. 2d 218, 176 N.E. 2d 719.

In *Raritan Valley Broadcasting Company, Inc.*, 1958, 122 N.L.R.B. 90, the Board declined to assert jurisdiction over radio stations that have a gross volume of business of less than $100,000 per year because the $100,000 gross volume of business standard will cover "all labor disputes involving such enterprises which tend to exert a pronounced impact on commerce."

The contention of petitioners and the United States that the operations of separate legal entities must be considered

by a state court in determining whether a particular employer falls within "any class or category of employers" as used in Section 14(c)(1), if accepted, would open Pandora's box and nullify 14(c)(1) and 14(c)(2).

Congress delfberately chose the word "employer" for use in Section 14(c). Congress itself defined "employer" in Section 2(2) of the Labor Management Relations Act, 29 U.S.C.A. 152(2):

> The term "employer" includes any person acting as an agent of an employer, directly or indirectly but shall not include . . .

This definition does not peripherally make separate legal entities an "employer" for jurisdictional purposes. Had Congress intended to establish an "enterprise" coverage it could and would have done so just as it established separate "employer" and "enterprise" coverages in the Fair Labor Standards Act. 29 U.S.C.A. 203(d) and (r).

The words of the Board in *Siemons Mailing Service*, 1958, 122 N.L.R.B. 81, 83, in justifying the adoption of jurisdictional standards is relevant here:

> . . . Experience has demonstrated that an *ad hoc* or case-by-case approach inevitably leads in practice to the establishment of roughly drawn standards or tests, simply by virtue of the fact that previous decisions are urged upon the Board as precedent by parties before the Board, and relied on by the Board to justify its determinations. Experience has shown, however, that jurisdictional guide lines thus established are extremely time and energy consuming to

apply, and result in confusion and uncertainty as to exactly where the dividing line will be drawn in particular cases, not only for parties appearing before the Board but for members of its staff as well, with the result that a disproportionate share of the available resources of the Board is utilized in the investigation of jurisdictional questions. The Board's experience under its 1950 and 1954 jurisdictional standards demonstrated that the utilization of jurisdictional standards, if simply drawn and relatively few in number, significantly reduces the amount of time, energy, and funds expended by the Board and its staff in the investigation and resolution of jurisdictional issues, thus enabling the Board to devote a greater portion of its resources to the processing of substantive problems in a greater number of cases.

A case-by-case approach to determine whether separate legal entities constitute a single "employer" for the purpose of determining whether the Board or states will have jurisdiction under Section 14(c) will lead in practice to the establishment of roughly drawn tests.

Experience has shown that jurisdictional guide lines established on a case-by-case approach are extremely time and energy consuming to apply, and result in confusion and uncertainty as to exactly where the dividing line will be drawn in particular cases. On the other hand, the utilization of the jurisdictional standards enunciated by the Board for particular types of industry is simple to apply and will result in a clear and uniform fracture between Board jurisdiction and state jurisdiction.

We submit that this Court should adopt the reasoning of the Supreme Court of Alabama and establish once and for all a clear fracture between state and federal jurisdiction in labor relations. To do less will result in a not so vast no-man's-land but none the less a no-man's-land in which some employers, some employees and some unions will be deprived of any effective remedy.

B.

Assuming, Arguendo, That The Supreme Court Of Alabama Erred In Refusing To Consider The Operations Of Several Separate Corporations For Jurisdictional Purposes, This Court Should Remand This Cause To The Supreme Court Of Alabama With Directions To Apply Appropriate Law To The Facts.

The petitioners and the United States contend that the Board would conclude that the five separate corporations of the Holt Broadcasting Service constitute a single employer for purposes of the Board's discretionary jurisdictional rules. The Alabama Supreme Court did not make any findings of fact or conclusions of law on this contention; doubtless because, under its views of the applicable law, this contention was immaterial.

The petitioners and the United States ask this Court to review the evidence pertaining to the corporate structure, ownership and *modus operandi* of each of five corporations, and then determine in the first instance whether the Board would consider the five separate corporations as a single employer for jurisdictional purposes.

It is not the function of this Court to make an independent examination of this entire record and to pass on the evidence without its prior consideration by the lower court. *National Labor Relations Board v. Donnelly Garment Co.*, 330 U.S. 219, 237, 91 L. Ed. 854, 867-8. Nor is it the function of this Court to apply Board decisions to the facts of this cause in the first instance. *National Labor Relations Board v. Pittsburgh Steamship Company*, 337 U.S. 656, 661, 93 L. Ed. 1602, 1607. If this Court should determine that the Supreme Court of Alabama erred in refusing to look to the operations of the several separate corporations, this Court should remand this cause to the Supreme Court of Alabama with directions to apply the appropriate law to the facts.

C.

Broadcast Is An Employer For Jurisdictional Purposes.

In the *Twenty-First Annual Report of the National Labor Relations Board*, the Board said at pages 14-15:

> In applying the present jurisdictional standards, the Board early reaffirmed the long-established practice of treating separate concerns which are closely related as being a single employer for the purpose of determining whether to assert jurisdiction. The question in such cases is whether the enterprises are sufficiently integrated to consider the business of both together in applying the jurisdictional standards.
>
> The principal factors which the Board weighs in deciding whether sufficient integration exists include the extent of:

1. Interrelation of operations;
2. Centralized control of labor relations;
3. Common management; and,
4. Common ownership or financial control.

No one of these factors has been held to be controlling, but the Board opinions have stressed the first three factors, which go to show 'operational integration,' particularly centralized control of labor relations. The Board has declined in several cases to find integration merely upon the basis of common ownership or financial control.

A myriad of cases exist wherein the Board has attempted to apply the four enumerated criteria. Some cases speak only of ultimate facts and are useless as precedents in determining the meaning of the four criteria, much less as a precedent to apply to a particular set of evidentiary facts. At best the Board decisions result in confusion and uncertainty as to exactly where the dividing line will be drawn in a close case. The Board decisions are anything but consistent. Compare *Orkin "The Rat Man" Incorporated*, 1955, 112 N.L.R.B. 762 with *Orkin Exterminating Company, Inc.*, 1956, 115 N.L.R.B. 622. In the first *Orkin* case the Board, after an exhaustive analysis of the relationship of the employer involved with twenty-eight other Orkin corporations, declined to combine the operations of all twenty-eight corporations for jurisdictional purposes. In the second *Orkin* case after another exhaustive analysis of the interrelationship of the same Orkin corporations, the Board combined all Orkin corporations for jurisdictional purposes. If the truth be known, the dividing line will probably be drawn in accordance with the desires or impressions of the particular

staff member of the Board member whose lot the case is assigned for decision. If the staff member thinks that federal power should be extended to its utmost, he can unquestionably find precedent to support a finding of sufficient integration. If on the other hand, the staff member chooses to exercise judicial restraint, the line he draws will likewise be adequately supported by Board precedent but will relinquish jurisdiction to the states.

Due to the Board's laudable policy of disposing of cases on an informal basis where the Board does not choose to assert jurisdiction, few cases reach the decision stage in which the Board does not exercise jurisdiction.

Above all an evaluation of the evidentiary facts upon which the ultimate facts are based is necessary to a proper understanding of the Board's criteria and the way in which the Board itself applies its criteria.

1. Interrelation of Operations.

Interrelation of operations consists of one enterprise performing a service for, or making sales to, an affiliated company. *Venus Die Engineering Company*, 1954, 110 N.L.R.B. 336.

In many cases relying on interrelation of operations one corporation was entirely or substantially dependent upon the other for its work or sales,[1] the corporations occupied

[1] National Labor Relations Board v. Jones Sausage Company, 4 Cir., 1958, 257 F.2d 878; National Labor Relations Board v. Somerset Classics, 2 Cir., 1952, 193 F.2d 613, cert. deni., sub nom.: Modern Manufacturing Co., Inc. v. National Labor Relations Board, 344 U.S. 816, 97 L. Ed. 635; Corfu Manufacturing Corporation, 1961, 48 L.R.R.M. 1584; Canton Carp's, Inc., 1959, 125 N.L.R.B. 483. Cf. J. G. Roy & Sons Company v. National Labor Relations Board, 1958, 1 Cir., 251 F.2d 771.

joint or adjacent facilities,[2] or shared common rank and file employees as distinguished from officers and managers.[3]

Here, each operating corporation operates a radio station in a city widely separated from any of the other radio stations. (Appendix B, R. 324-6.) None of the operating corporations renders any service or makes any sales to any of the other corporations. There is absolutely no evidence of the existence of a "network" among the several stations or between any two of the stations. The evidence affirmatively establishes that each station chooses its own program material. (R. 190.)

The only evidence, if any, of integration of operations is that a separate service corporation performs some, but not all, of each operating corporation's accounting. (R. 97, 327-8, 340.). The Board and the courts have consistently held that centralized bookkeeping does not constitute "interrelation of operations." *Bachman Machine Company v. National Labor Relations Board*, 8 Cir., 1959, 266 F.2d 599, 601, 605; *Clark Concrete Construction Corporation*, 1956, 116 N.L.R.B. 321, 322; *Modern Linen & Laundry Service, Inc.*, 1954, 110 N.L.R.B. 1305, 1306; *Spartan Cafeteria Corporation*, 1954, 109 N.L.R.B. 166, 167.

2. Centralized Control of Labor Relations.

"Labor Relations" as used by the Board means wage rates, vacations, and other employee benefits.

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[2] National Labor Relations Board v. Jones Sausage Company, 4 Cir., 1958, 257 F.2d 878; Venus Die Engineering Company, 1954, 110 N.L.R.B. 336; National Labor Relations Board v. A. K. Allen Co., Inc., 2 Cir., 1958, 252 F.2d 37; Crenshaw's, Inc., 1956, 115 N.L.R.B. 1374, Hamilton Brothers, Inc., 1961, 130 N.L.R.B. 233; Edward Small Productions, Inc., 1960, 127 N.L.R.B. 283.

[3] Venus Die Engineering Company, 1954, 110 N.L.R.B. 336, Hamilton Brothers, Inc., 1961, 130 N.L.R.B. 233.

In *Central Dairy Products Co.*, 1955, 114 N.L.R.B. 1189, Central Dairy Products was "managed by the Southwest Management Company" which "was created for the sole purpose of administering" Central Dairy Products and two other companies engaged in a similar line of business. Corporate officers of Central Dairy Products, Southwest Management Company, and the two affiliated companies were identical. The Board concluded that each corporation was a separate enterprise for jurisdictional purposes. In so finding, the Board at 114 N.L.R.B. 1189, 1190, relied on the following:

> The record is devoid of evidence which would show centralized control of labor relations among these corporations with respect to the hiring and discharging of employees, setting wage rates, and establishment of vacations and other employment benefits. Similarly there is no indication of interchange of employees among the corporations. Under these circumstances, the facts that the 4 corporations have the same officers and that 3 of the corporations are managed by a fourth are not sufficient evidence to establish that the 4 corporations constitute a single employer within the meaning of the Act or that the Employer is a part of a single integrated enterprise.

Here, Broadcast's station manager and the station manager of each of the other corporations have full charge of labor relations as defined by the Board; each station manager determines his employees' rates of pay, hours of work, vacations, holidays, and other working conditions; each station manager has and exercises the unfettered authority to hire and discharge employees. (R 127-8, 185, 293-4, 303, 328-9, 340.) Working conditions are not uniform among the several corporations. (R 328-9.)

The Board has consistently considered centralized control of labor relations and the presence or absence of a common labor policy as a salient factor in determining whether separate legal entities constitute a "single" employer for jurisdictional purposes. *Twenty-First Annual Report of the National Labor Relations Board*, 15. Cases cited by the petitioners and the United States demonstrate the importance of this factor. *Sakrete of Northern California, Inc. v. National Labor Relations Board*, 9 Cir., 1964, 332 F.2d 902, where the president of the two corporations involved exercised authority on local matters such as the hiring and firing of employees, setting wage rates and conditions of employment; *Family Laundry, Inc.*, 1958, 121 N.L.R.B. 1619, where the employees of the several corporations were covered by a noncontributory pension plan; *V.I.P. Radio, Inc.*, 1960, 128 N.L.R.B. 113, where "general working conditions for all the stations . . . covering such matters as job classifications, overtime, the workweek, holidays, vacations, and so forth" were contained in a document that was posted in each station; *Corfu Manufacturing Corp.*, 1961, 48 L.R.R.M. 1584, where the sole function of one corporation was . . . "to supply production and maintenance employees" to the other; *Perfect T.V. Inc.*, 1961, 134 N.L.R.B. 575, where the corporations were "managed and operated by the same personnel"; *Wash Well No. 2, Inc.*, 1962, 139 N.L.R.B. 417, 421-2, where the president of the five corporations involved delivered an anti-union speech to the employees of one of the corporations that had an alleged independent manager and otherwise personally participated in an unlawful anti-union campaign at other affiliated corporations, in addition there was some transfer of employees

between the corporations in furtherance of unfair labor practices; *P-M Garages, Inc.*, 1962, 139 N.L.R.B. 987, 982, where the employees of the several corporations were all hired subject to the approval of one over all general manager, rates of pay for all employees were the same, and employees were regularly, temporarily and permanently transferred between corporations; *Checker Cab Co.*, 1963, 141 N.L.R.B. 583, where all applicants for employment were screened by the association, working rules were established by the association and the association reviewed employees' conduct; *Overton Markets, Inc.*, 1963, 142 N.L.R.B. 615, where the employees of each corporation were covered by identical and transferable profit sharing and insurance plans.

The contention of Local 1264, and of the United States that Holt, Robinson, and Lightsey have sole authority to negotiate with unions is not supported by the record. Broadcast's manager sought help from his superiors when he was confronted with Local 1264's legal contention that Local 1264 had an existing collective bargaining agreement with Broadcast and that Fridge was an employee of Broadcast. (R 131-2, 139, 160.) Broadcast's Mobile attorney was also consulted for legal advice on Local 1264's contentions. (R 119.) Negotiations were next conducted between Local 1264, Broadcast's manager, and Broadcast's local attorney without the presence of any corporate official. (R 215-6.)

Indeed, even if a single officer controlled the labor relations of all four operating stations in connection with negotiations with unions, such fact would be insufficient

to justify considering the business of the other three stations in applying jurisdictional standards. *Bachman Machine Company v. National Labor Relations Board*, 8 Cir., 1959, 266 F.2d 599, 605. *Cf. Miami Newspaper Printing Pressmen's Local No. 46*, 1962, 138 N.L.R.B. 1346, 1350, 1351, enforced *Miami Newspaper Pressmen's Local No. 46 v. National Labor Relations Board*, C.A.D.C., 1963, 322 F.2d 405, where the Board found that a wholly owned subsidiary of a closely held corporation was a separate employer although an officer of the parent attended bargaining conferences with the subsidiary's union, advised management of the subsidiary on operations and labor relations matters, temporarily assumed charge of the subsidiary's bargaining, and was consulted from time to time by the management of various affiliates in connection with their labor problems.

3. Common Management.

In ascertaining whether affiliated corporations have common management the Board gives little weight to the fact that the officers of the various corporations are the same. Board decisions turn on whether a single individual controls the "day-to-day operations" of more than one corporation. *Goodman's, Inc.*, 1952, 101 N.L.R.B. 352; *Consolidated Gas Company*, 1953, 107 N.L.R.B. 148; *Modern Linen & Laundry Service, Inc.*, 1954, 110 N.L.R.B. 1305; *Central Dairy Products Co.*, 1955, 114 N.L.R.B. 1189; *Clark Concrete Construction Corporation*, 1956, 116 N.L.R.B. 321. The First, Fifth, Eighth and District of Columbia Circuits hold that the power to control the "day-to-day operations" of related corporations is irrelevant;

only the exercise of the power to control the "day-to-day operations" of separate corporations may be considered in determining whether separate corporations are to be considered as a "single employer" under the National Labor Relations Act. *J. G. Roy & Sons Co. v. National Labor Relations Board*, 1 Cir., 1958, 251 F.2d 771, 773-4; *Employing Lithographers of Greater Miami v. National Labor Relations Board*, 5 Cir., 1962, 301 F.2d 20, 28-9, *Bachman Machine Company v. National Labor Relations Board*, 8 Cir., 1959, 266 F.2d 599, 605; *Miami Newspaper Pressmen's Local No. 46 v. National Labor Relations Board*, C.A. D.C. 1963, 322 F.2d 405, 408.

The undisputed testimony in this cause establishes that the individual station manager has full charge of and responsibility for the "day-to-day operations" of his particular station including, but not limited to, the selection and discharge of personnel, the setting of wages, vacations, time off and other working conditions and the making of purchases and sales. (R 127-8, 185, 293-4, 303, 328-9, 340, 347.)

The Trial Judge summarized the entire testimony concerning the duties of the station manager in these words:

> I think what this witness has said is that he runs that station and that is his job and nobody tells him insofar as details are concerned how to run it, and I don't imagine anybody is going to as long as he's doing a good job of making money, but I imagine if you start losing money then somebody is going to get concerned. (R 303.)

The fact that the owners and officers of the various corporations choose the station managers does not detract in the least from the fact that the important "day-to-day operations" of the various corporations are under the direct and sole supervision of the station manager. Obviously, only the owners, officers and directors of several affiliated corporations choose the manager of each particular corporation. Obviously, they will choose the best qualified manager they can obtain. To say that several affiliated and jointly owned corporations should be considered as a single employer for jurisdictional purposes because the owners and officers of the corporation chose the managers and have something to do with the general affairs of the corporation would in substance eliminate the necessity for determining whether commonly owned affiliated corporations are "sufficiently integrated to consider the business of both together in applying the jurisdictional standards."

Moreover, the Board merely considers the responsibility for the "day-to-day operations" only one of the important factors. In *Toledo Service Parking Company*, 1951, 96 N.L.R.B. 263, 264, the Board held that several family owned corporations which operated parking garages under the supervision of one general manager were separate and distinct for jurisdictional purposes and in *Central Dairy Products Co.*, 1955, 114 N.L.R.B. 1189, the Board found insufficient integration to establish a single employer for jurisdictional purposes although three corporations were managed by a fourth.

4. Common Ownership and Financial Control.

Common ownership and financial control is the least significant factor which the Board considers in determining whether two or more corporations are a single employer for jurisdictional purposes. *Twenty-First Annual Report of the National Labor Relations Board,* 15.

Common ownership and financial control like the power to make the major decisions and to employ managers of the separate corporations, if accorded great weight would be conclusive in each case and would result in a policy of considering all affiliated corporations as one employer for jurisdictional purposes. The insignificance of these factors is demonstrated by the fact that the Board does not consider a parent corporation and a wholly owned subsidiary a single employer for jurisdictional purposes unless the other criteria are met. *Goodman's, Inc.,* 1952, 101 N.L.R.B. 352; *Consolidated Gas Company,* 1953, 107 N.L.R.B. 148; *Spartan Cafeteria Corporation,* 1954, 109 N.L.R.B. 166; *Butte Water Company,* 1957, 117 N.L.R.B. 484.

The insignificance accorded financial control explains why the Board has given little weight to centralized bookkeeping. *Bachman Machine Company v. National Labor Relations Board,* 8 Cir., 1959, 266 F.2d 599, 601, 605; *Clark Concrete Construction Corporation,* 1956, 116 N.L.R.B. 321, 322; *Modern Linen & Laundry Service, Inc.,* 1954, 110 N.L.R.B. 1305, 1306; *Spartan Cafeteria Corporation,* 1954, 109 N.L.R.B. 166, 167.

Little weight should be given here to the fact that each of the corporations here has an identical terasurer who is

employed by Air Enterprizes, Inc., and who attempts to see that the money on the books of the several corporations is collected. (R 329.)

An analysis of the citations relied upon by the petitioners and by the United States establishes that each contains evidentiary facts showing substantially more "integration" than exists here or merely contains ultimate facts.

In *Family Laundry, Inc.*, 1958, 121 N.L.R.B. 1619, the Board panel relied heavily on the fact that the New York office maintained "a noncontributory pension plan" which covered employees of the separate corporations. This pension plan established an identity of interest among the employees of the several corporations. Broadcast's manager has authority to make purchases without prior approval of anyone. In *Family Laundry, Inc.*, the manager was required to submit a requisition to the New York office and obtain a purchase order as a prerequisite of making a purchase; in substance he had no authority to make any purchase.

In *Canton, Carp's, Inc.*, 1959, 125 N.L.R.B. 483, the Board was dealing with a retail merchandising chain, one of the affiliated corporations acting "as the wholesaling and warehousing part of the Carp merchandising operations." Most of the purchases of the affiliated corporations were made from the wholesaling and warehousing corporation. Leases were executed in the name of the "parent" corporation and assigned to the new cor-

poration in order to have "somebody responsible" under the lease.

In *V.I.P. Radio, Inc.*, 1960, 128 N.L.R.B. 113, in the words of the Board panel:

> There is a general manager over all the subsidiaries, a network news director, and network director. General working conditions for all the stations are set forth in a document entitled "Herald Tribune Radio Network-Personnel Policies & Practices," adopted in 1959, and covering such matters as job classifications, overtime, the workweek, holidays, vacations, and so forth. * * * Employees at all stations are covered by the same group life insurance and health and medical policies.

Alpha Corporation, 1960, 128 N.L.R.B. 309, involved a wholly owned subsidiary that was formerly a division of its parent. Apparently, none of the parties opposed the Board's finding that the parent and its subsidiary were a single employer for both jurisdictional and unit purposes. The only evidence alluded to in the panel's decision was the fact that parent had transferred employees to the subsidiary upon formation of the subsidiary and that the parent determined whether particular work would be allocated to the subsidiary involved or to another of the parent's subsidiaries. The allocation of work made the subsidiary entirely dependent upon the parent.

In *Corfu Manufacturing Corporation*, 1961, 48 L.R.R.M. 1584, the sole function of one corporation was to supply

production and maintenance employees to the affiliated corporation; all employees of one corporation being recruited, interviewed and hired by the other.

In *Perfect T.V., Inc.*, 1961, 134 N.L.R.B. 575, the employer admitted that the various corporations have "a very, very close interrelated working arrangement, and, in fact, are managed and operated by the same personnel"; in *Perfect T.V.*, the Board made no detailed findings that would help this Court ascertain what evidentiary facts, if any, the Board relied upon in reaching its conclusions.

In *Wash Well No. 2, Inc.*, 1962, 139 N.L.R.B. 417, various laundry routes, substations and contracts were frequently transferred from one corporation to another and one of the affiliated corporations performed laundry and dry cleaning services for another. Although each corporation had its own manager the president and owner of the various corporations spoke to the employees about union organizational efforts, furnished another corporate manager with union withdrawal forms, the president was quoted as threatening to close the business of one corporation if the union was successful and employees were transferred between the corporations in connection with unfair labor practices.

In *P-M Garages, Inc.*, 1962, 139 N.L.R.B. 987, one general manager was responsible for all of the corporations' business; all employees were hired subject to approval of the general manager; the rates of pay among the several corporations were the same; there were frequent temporary and permanent transfers of employees

among the corporations; employees desiring to work after their regular assigned shifts were assigned to work at another corporation's place of business; and, the general manager interrogated employees of the various corporations about their union affiliations.

Checker Cab Co., 1963, 141 N.L.R.B. 583, and *Overton Markets, Inc.*, 1963, 142 N.L.R.B. 615, deserve special attention because each was a three to two decision and each contains factors which may have well caused one of the majority to have joined with the minority and declined jurisdiction.

In *Checker Cab Co.*, 1963, 141 N.L.R.B. 583, members Rodgers and Leedom dissenting, the majority exercised jurisdiction over several employers although none met the jurisdictional standards where the employers had formed an association. All applicants for employment were required to be screened by an association employee before being employed. The association exercised "substantial control over each member's drivers in their day-to-day conduct." The association promulgated rules and regulations which prescribed the method of operating the cab generally and included instructions as to personal cleanliness and driver courtesy and prescribed that uniform caps must be worn and certain articles of clothing must not be worn, prohibited smoking, fighting, drinking intoxicants, pushing a car with a cab, and picking up another fare while there is a passenger in the cab, required the first driver up on a stand to answer the call-box and that a passing driver must stop and answer the telephone at all empty cabstands and required the driver

to refrain from lounging in the rear of his cab. In all there was a total of thirty-nine rules. The association also maintained a Board of Review which passed upon complaints against drivers.

Overton Markets, Inc., 1963, 142 N.L.R.B. 615, pertained to a chain of grocery stores located in a single town. The stores used joint weekly newspaper advertising, identical special sales, common purchasing and had identical and transferable employee profit sharing and insurance plans. Employees and officers of all corporations attended joint meetings where the group insurance plan and profit sharing plan were explained. Three or four employees and one or two store managers employed by the various corporations had worked previously for a different corporation. All had the same accounting firm and attorney. In their dissent, members Rodgers and Leedom pointed out that the majority had not shown the necessary degree of common ownership and control, including control of labor relations which the Board had, in the past, deemed essential before separate entities could be found to be a single employer. The dissent stressed the fact that the "wages, hours and working conditions of the employees of the various stores" were not uniform, and there was no "employee interchange."

Overton Markets, Inc., and *Checker Cab Co.*, demonstrate that a salient criteria is unformity in wages, hours and working conditions and frequent and regular employee interchange. We further submit that it is significant that, at least according to the decisions of the National Labor Relations Board, the majority of the Board did

not deviate from the requirements of uniformity in wages, hours and working conditions and frequent employee interchange until May of 1963, nine months after this cause was filed. We further submit that both *Overton* and *Checker* contain substantially more evidence of integration than exists here.

Court decisions relied upon by the petitioners and by the United States also show substantially more "integration" than exists among the separate corporations here involved.

In *National Labor Relations Board v. A. K. Allen Co., Inc.*, 2 Cir., 1958, 252 F.2d 37, one corporation furnished employees to the other, the various corporations occupied unpartitioned areas on a single floor, shared a common office, stock room and shipping area and used the same office staff, shipping clerk, inspector and timekeeper; all employees punched a common time clock and used the same washroom facilities, the corporations had substantially the same policies with respect to wage rates, working conditions and fringe benefits, notices to employees were posted on a common bulletin board and all employees were covered by the same group insurance policy.

In *National Labor Relations Board v. Jones Sausage Company*, 4 Cir., 1958, 257 F.2d 878, one corporation sold ninety per cent of its products to the other, the two corporations occupied the same building, both corporations had the same general manager and all employees of the two corporations had the same hospitalization and vacation plans.

National Labor Relations Board v. Royal Oak Tool & Machine Company, 6 Cir., 1963, 320 F.2d 77, did not involve a question of jurisdictional amount; the Board held that two corporations were a joint employer and jointly responsible for unfair labor practices where one corporation had created the other by spinning-off a division of its operations; "one of the avowed purposes of the 'spin-off' was to reduce labor cost in the . . . division" and to avoid bargaining with the recognized union; at the time of the "spin-off" there was in effect a single collective bargaining agreement covering all employees.

In *Sakrete of Northern California, Inc. v. National Labor Relations Board*, 9 Cir., 1964, 332 F.2d 902, the Board and the court specifically relied upon the fact that one Avril, who was president of both corporations, did substantially "more than set general policy"; Avril exercised authority on "local matters" such as the hiring and firing of employees, setting wage rates and conditions of employment. Here, the local manager has unfettered authority over all of the local matters controlled by Avril in *Sakrete*.

In the two cases that have reached the court of appeals where the Board failed to apply its announced criteria the Board was reversed. In *J. G. Roy & Sons Company v. National Labor Relations Board*, 1 Cir., 1958, 251 F.2d 771, the court set aside a Board order finding that two corporations were a single employer because the court found that the companies were not engaged in a "straight line operation" and because the evidence did not establish sufficient integration of operations to consider the two corporations

as one as the companies had separate offices and records; had no common supervisors or employees; did not transfer personnel from one to another and each did its own hiring and firing although they were commonly owned and had the same president and directors. See also *Employing Lithographers of Greater Miami v. National Labor Relations Board*, 1962, 5 Cir., 301 F.2d 20, 28-9. *Cf. Miami Newspaper Pressmen's Local No. 46 v. National Labor Relations Board*, C.A.D.C., 1963, 322 F.2d 405.

D.

State Courts Are Entitled To Determine Their Own Jurisdiction On The Basis Of Evidence Presented In The State Courts.

The contention of the petitioners and the United States that the Alabama court should have submitted this cause to the National Labor Relations Board for an advisory opinion is without merit for two reasons.

It is clear from the reading of the Act itself that Congress intended state courts to determine their own jurisdiction without the necessity of submitting the jurisdictional facts to the Board. There would have been no reason for Congress to employ the words "may by rule or decision or by published rules . . . decline to assert jurisdiction" if Congress had intended for the Board to decline to assert jurisdiction on a case by case basis before states could act.

In the *Landrum-Griffin Amendments to the National Labor Relations Act*, 44 Minn. L. Rev. 257, 262, Professor, now Solicitor General Cox, stated:

> The state courts will be free to apply state law in cases which do not meet the Board's jurisdictional standards. When a claim of preemption is raised in a concrete case, the state courts will be required to hear evidence concerning the size of the employer's business, so as to determine whether the NLRB would exercise jurisdiction under its published standards. It would be inconsistent with the general tone of congressional discussion to require a party to apply to the NLRB and have it decline jurisdiction before seeking relief in a local tribunal.

Moreover, the "advisory opinion" procedure of the National Labor Relations Act is not designed to evaluate disputed testimony nor is it designed to afford the parties due process of law. In *Hirsch v. McCullough*, C.A.D.C., 1962, 303 F.2d 208, the United States Court of Appeals for the District of Columbia held that the Board's "advisory opinion" procedure did not comply with the minimum requirements of due process of law and reversed the decision of the district court which had accepted and based its order upon an "advisory opinion."

E.

A State Court Would Not Lose Jurisdiction Over A Labor Dispute Involving An Employer Over Whom The Board Had Declined To Assert Jurisdiction Merely Because The Union Attempted To Extend the Dispute To Employers Over Whom The Board Would Concededly Assert Jurisdiction.

Petitioners' contention that the state court lost jurisdiction over the labor dispute involving Broadcast because

Local 1264 contacted Paul Hamm, owner of a T.V. and appliance business, fails to take into account that Hamm's T.V. and appliance business was a retail business with less than $500,000.00 in sales per annum and therefore failed to meet the jurisdictional standards for a retail establishment. *Carolina Supplies and Cement Company*, 1958, 122 N.L.R.B. 88.

Acceptance of petitioners' contention that a state court would lose jurisdiction over a labor dispute involving an employer that did not meet the Board's jurisdictional standards as a result of union pressure on a secondary employer would result in the union being able to deprive a state court of jurisdiction in every case. The smallest hot dog vendor buys his goods from such interstate companies as Armour.

Petitioners' argument is based upon a misconception of the real meaning of the words "labor disputes" as used in Section 14(c) of the Act. In the *Landrum-Griffin Amendments to the National Labor Relations Act*, 44 Minn. L. Rev. 257, 262, Professor Cox, now Solicitor General Cox states:

> Unfortunately, the amendment speaks of jurisdiction over "labor disputes," where it would have been more consonant with prior legislative and administrative terminology to speak of "unfair labor practices" and "questions of representation"; but it is obvious that these proceedings, and not true disputes, were what the Congress had in mind, I cannot imagine the Board or a court having any doubt upon the question.

We have no question of representation here, Local 1264 has admitted that it represents none of Broadcast's employees. The only questions presented are whether it is an unfair labor practice for Local 1274 to picket Broadcast and bring pressure upon secondary employers to force Broadcast to enter into a collective bargaining agreement with Local 1264 although Local 1264 represents none of Broadcast's employees and whether Local 1264 may bring economic pressure upon Broadcast to require Broadcast to employ Fridge.

Congress gave state courts power to deal with the unfair labor practices. This power must of necessity include the power to enjoin an offending union from attempting to obtain an illegal objective even though the means used to obtain the objective might be peaceful. The state court must have the right to enjoin every act designed to achieve the illegal objective.

The rationale adopted in the *Landrum-Griffin Amendments to the National Labor Relations Act*, 44 Minn. L. Rev. 257, explains the unusual actions of the Board in the *Jemcon Broadcasting Company* cases. Prior to the issuance of its advisory opinion in *Jemcon*, the Regional Director for the Tenth Region of the Board dismissed a representation proceeding filed by Local 1264 against Jemcon Broadcasting Company (Case No. 15-RC-2444) on the grounds that "the Employer's operations in interstate commerce do not meet the minimum standards of the Board for the assertion of jurisdiction." (Appendix C.)

Thereafter the Board issued its advisory opinion in *Jemcon Broadcasting Company*, 1962, 135 N.L.R.B. 362, advising that it would assert jurisdiction.

Thereafter, the Federation of Licensed Broadcast Employees filed a petition with the Board (Case No. 15-RC-2617) against Jemcon Broadcasting Company. (Appendix D.) After a full hearing the Regional Director in his decision and order declined to assert jurisdiction stating:

> The Board standard for exercising jurisdiction over enterprises engaged in the operation of radio stations is a minimum gross volume of business of $100,000 per annum. See *Raritan Valley Broadcasting Co., Inc.*, 122 NLRB 90. Since the total income of Employer does not meet the jurisdictional standards for this industry, I shall dismiss the petition. *Cf. Jemcon Broadcasting Company*, 135 NLRB No. 48. (Appendix D.)

The Board denied the petitioners' request for review Case No. 15-RC-2617. (Appendix E.)

VII.

CONCLUSION

The judgment of the Supreme Court of Alabama should be affirmed or in the alternative the Court should remand this cause to the Supreme Court of Alabama with instructions to apply applicable federal law in accordance with the decision of this Court.

Dated this .... day of January, 1965.

Respectfully submitted

GEORGE E. STONE, JR.,
P. O. Box 1317,
Mobile, Alabama,

WILLIS C. DARBY, JR.,
P. O. Box 1273,
Mobile, Alabama,
Attorneys for Respondent.

CERTIFICATE OF SERVICE.

I, Willis C. Darby, Jr., hereby certify that I have mailed a copy of the foregoing Brief of Respondent properly addressed to J. R. Goldthwaite, Jr., 1431 Candler Building, Atlanta, Georgia. 30303 and to Pierre Pelham, First National Bank Building Annex, Mobile, Alabama, counsel for Petitioners, by depositing the same in a United States Post Office or mail box, with first class postage prepaid.

This the..... day of January, 1965.

WILLIS C. DARBY, JR.,
Attorney for Respondent.

APPENDICES

APPENDIX A.

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA.

IN EQUITY—No. 58,568-H.

BROADCAST SERVICE OF MOBILE, INC.,
Complainant,

versus

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, and WILLIAM RAYBURN, DAVID FRIDGE and H. D. SMITH,
Respondents.

FINAL DECREE.

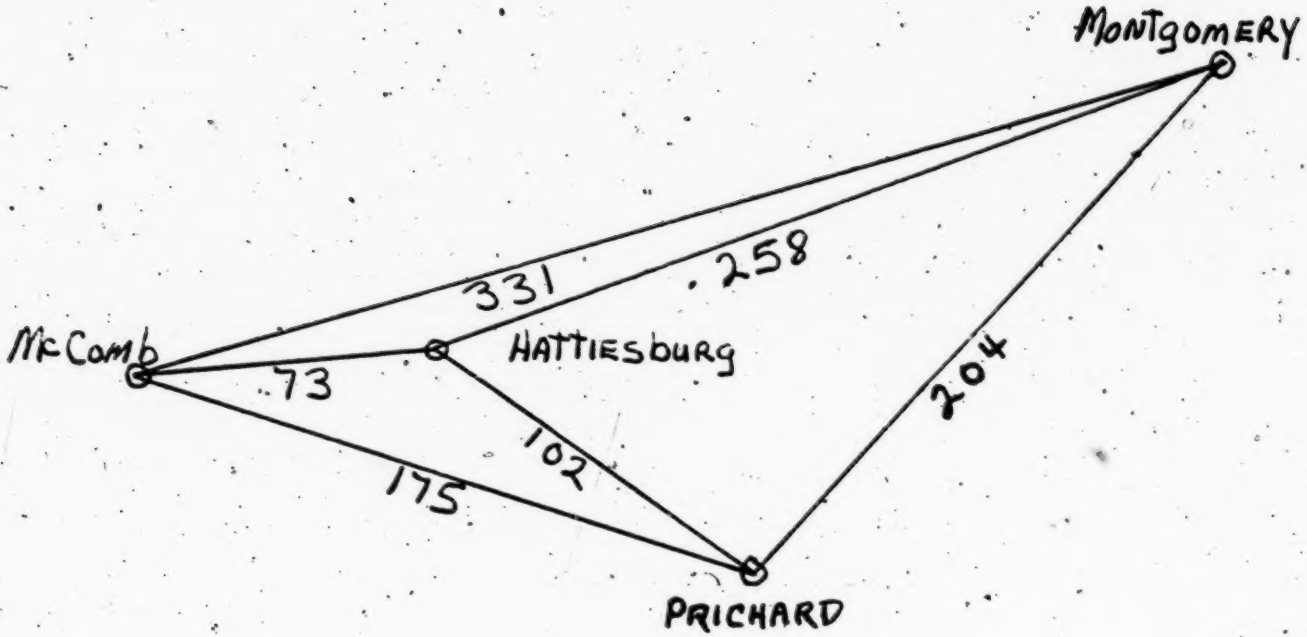
This cause being regularly set down for hearing and being submitted for decree on the pleadings and testimony as heard in open court and the court having duly considered the same, and upon consideration thereof, it is

ORDERED, ADJUDGED and DECREED by the court that the complainant recover actual damages in the sum of TWO THOUSAND FIVE HUNDRED EIGHTY AND 40/100ths ($2,580.40) DOLLARS from the respondents for which let execution issue.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the temporary injunction heretofore issued by this court be, and the same hereby is made permanent.

DATED March 6, 1964.

JOSEPH M. HOCKLANDER,
Judge.



Distances taken from
"Rand-McNally Special Road Atlas"
except for McComb

APPENDIX C.

NATIONAL LABOR RELATIONS BOARD
FIFTEENTH REGION

820 Lowich Building, 2026 St. Charles Avenue
New Orleans 13, Louisiana

Telephone 529-2411
Night 524-8320
September 25, 1961

Re: Jemco Broadcasting Company, Case No. 15-RC-2444

International Brotherhood of Electrical
Workers, AFL-CIO, Local Union 1264
301 Church Street
Mobile, Alabama

Gentlemen:

The above-captioned case, petitioning for an investigation and certification of representatives under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation, it appears that, because the Employer's operations in interstate commerce do not meet the minimum standards of the Board for the assertion of jurisdiction, further proceedings are not warranted at this time. I am, therefore, dismissing the petition in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action

by filing a request for such a review with the National Labor Relations Board, Washington 25, D.C. A copy of such request for review must be served upon each of the other parties to the proceeding, including the undersigned. This request must contain a complete statement setting forth the facts and reasons upon which it is based. The request (*original and six copies*) should be filed within ten (10) days from the date of receipt of this letter, except that the Board may, upon good cause shown, grant special permission for a longer period within which to file.

Sincerely yours,
JOHN F. LeBUS
Regional Director

Certified Mail
cc: Jemcon Broadcasting Company
303 St. Francis Street
Mobile, Alabama

Willis C. Darby, Jr., Esq.
307 First National Bank Bldg.
Mobile, Alabama

Board
Washington 25, D.C.

APPENDIX D.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

E. W. JEMISON AND FRANK CONWELL, PARTNERS, D/B/A JEMCON BROADCASTING COMPANY,[1]
Employer

and

FEDERATION OF LICENSED BROADCAST EMPLOYEES,
Petitioner.

DECISION AND ORDER.

Case No. 15-RC-2617

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudical error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization(s) involved claim(s) to represent employees of the Employer.

[1] The name of Employer appears as corrected at the hearing.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Employer operates Radio Station WLIQ in Mobile, Alabama. During the period September, 1961, through August, 1962, the Employer had total billings of $61,391 which constituted its entire receipts for that period. Included was the sum of $1,549.15, received from the American Broadcasting Company. More than 90% of its advertising revenues are received from local, as opposed to national, advertising. During the same period, its purchases of goods which originated outside the State of Alabama were approximately $585.

The Board standard for exercising jurisdiction over enterprises engaged in the operation of radio stations is a minimum gross volume of business of $100,000 per annum. See *Raritan Valley Broadcasting Co., Inc.*, 122 NLRB 90. Since the total income of Employer does not meet the jurisdictional standards for this industry, I shall dismiss the petition. *Cf. Jemcon Broadcasting Company*, 135 NLRB No. 48.

ORDER.

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is dismissed.

Dated September 27, 1962 at New Orleans, Louisiana.

(S.) CHARLES M. PASCHAL, JR.,
(Charles M. Paschal, Jr.),
Acting Regional Director for the
15th Region.

APPENDIX E.

WESTERN UNION

TELEGRAM

NSA303

NS LLJ090 Govt Pd—Tdns Pws Washington DC 23 1241P CST—

Kilborn Darby and Kilborn, Attn Willis C Darby Jr Esq—307 First Natl Bank Mobile Ala—

Re: E W Jemison and Frank Conwell, Partners d/b/a Jemcon Broadcasting Company, 15-RC-2617. It is hereby ordered that the petitioners request for review be, and it hereby is, denied as it raises no substantial issues of fact or law warranting review. By direction of the Board—

HOWARD W KLEEB Asso Exec Secy National Labor Relations Board.